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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERNICE ROSE and	:	
CHARLES ROSE, her husband,	:	
Plaintiffs	:	
	:	
V.	:	Civil Action No. 02-CV-4675
	:	
UNITED STATES OF AMERICA	:	
Defendant.	:	

DEFENDANT'S MOTION TO COMPEL DISCOVERY

The Defendant, the United States of America, by its undersigned counsel, hereby moves the Court pursuant to Fed.R.Civ.P. 37 and L.R. 26.1(g) for an Order compelling the plaintiff, Bernice Rose, to respond to the defendant's Interrogatories and Requests for Production of Documents and assigns the following reasons in support thereof:

1. The complaint in this action was filed on July 15, 2002. The defendant filed and served its answer to the complaint on October 2, 2002.
2. Counsel for the federal defendant was involved in an accident requiring surgery to repair multiple fractures to her wrist. Counsel was unable to engage in discovery during the resulting absence from the office or prepare for arbitration originally scheduled for February 5, 2003. The arbitration was subsequently rescheduled to March 19, 2003 to permit defendant's counsel to conduct discovery.
3. On February 4, 2003, the defendant served plaintiff with Defendant's First Set of Interrogatories Directed to Plaintiff and Defendant's Request for Production of Documents Directed to Plaintiff, true and correct copies of which are attached hereto and incorporated herein

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by reference as Exhibits A and B, respectively. Counsel will depose the plaintiffs after receipt of the outstanding discovery.

4. To date, responses to the discovery have not been served on the defendant, and the parties have not been able to find a mutually agreeable date and time for the plaintiffs' depositions prior to the arbitration date of March 19, 2003 due to schedule conflicts. Upon motion of the defendant, the arbitration has therefore been rescheduled for April 21, 2003.

5. Plaintiffs' counsel had advised that discovery responses had advised that the discovery responses were are being worked on, and that they would be completed this week..

6. To date, no responses to the outstanding discovery have been received by the defendant. Receipt and review of the initial discovery is necessary for the defendant to determine if additional discovery is required, to conduct the depositions of the plaintiffs and to prepare for arbitration now scheduled for April 21, 2003.

7. No excuse has been offered for the failure to respond to the discovery requests. Accordingly, defendant is entitled to the entry of an Order compelling plaintiff to respond to the outstanding discovery pursuant to Rule 37(a)(2)(B) and to award defendant its reasonable expenses incurred in making this motion.

8. As required by L.R. 26.1(f) defendant's counsel has attempted to resolve the dispute without success, as set forth in the attached certification.

9. As defendant is unable to prepare the case for trial or dispositive motions without the required discovery, good cause exists for the court to grant this motion summarily in accordance with L.R. 26.1(g).

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WHEREFORE, the defendant requests the Court to order the plaintiff, Bemice Rose, to respond to the Interrogatories and Requests for Production of Documents immediately and to award defendant its reasonable expenses incurred in making this motion.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

JAMES G. SHEEHAN
Assistant United States Attorney
Chief, Civil Division

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CERTIFICATION UNDER LOCAL RULE 26.1(f)

I hereby certify that after a number of oral and written attempts, the parties are unable to resolve the dispute. Plaintiff has not served defendant with any response to the defendant's Interrogatories or Requests for Production which have been pending since February 4, 2003.

Dated: March 14, 2003

VIRGINIA R. POWEL
Assistant United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Compel was served upon opposing counsel by depositing same in the United States mails, postage prepaid on March 14, 2003, addressed to:

Joseph O'Donnell, Esquire
O'Donnell, O'Hara & Saltzman, LLC
1931 Nottingham Way
Trenton, NJ 08619

VIRGINIA R. POWEL
Assistant United States Attorney

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Defendant.	:	

ORDER

AND NOW, this day of , 2003, upon consideration of the plaintiff's Motion to Compel Discovery and good cause appearing therein, and the plaintiff having failed to Answer Interrogatories and Requests for Production served on February 4, 2003, it is hereby **ORDERED** in accordance with Rule 37(a) of the Fed. R. Civ. Pro., that the plaintiff shall serve the defendant with Answers to Interrogatories and Responses to Requests for Production immediately.

IT IS FURTHER ORDERED that defendant may petition the court for an Order directing plaintiff to pay to the defendant the reasonable expenses incurred in the filing of this motion pursuant to Rule 37(a)(4) of the Federal Rules of Civil Procedure.

BY THE COURT:

JOHN R. PADOVA
Judge, United States District Court